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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 PLACIDO F. SOLIVEN,

11 Plaintiff,

12 v.

13 BANK OF AMERICA, NA,

14 Defendant.

Civil No. 10CV1324 JAH(WVG)

**ORDER GRANTING PLAINTIFF'S
PETITION FOR A TEMPORARY
RESTRAINING ORDER AND
SETTING BRIEFING SCHEDULE
ON PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

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16 On June 22, 2010, plaintiff, proceeding *pro se*, filed a complaint along with an ex
17 parte petition for restraining order. According to the petition, Defendant, Bank of
18 America, scheduled a foreclosure sale of plaintiff's residence on June 9, 2010. Although
19 it is somewhat unclear from plaintiff's petition, it appears plaintiff is seeking a temporary
20 restraining order enjoining defendant from proceeding with any future sale of his
21 residence, located at 2921 E. 11th Street, National City, CA 91950, and from initiating
22 an unlawful detainer action to evict him from that residence.

23 After a careful consideration of the pleadings presented, this Court finds that
24 plaintiff has sufficiently met the requirements for issuance of a temporary restraining order
25 pursuant to Rule 65 of the Federal Rules of Civil Procedure, in that plaintiff has
26 sufficiently demonstrated irreparable harm and the balance of hardships tip sharply in
27 plaintiff's favor. Immigrant Assistance Project of the L.A. County of Fed'n of Labor v.
28 INS, 306 F.3d 842, 873 (9th Cir. 2002); Sun Microsystems, Inc. v. Microsoft Corp., 188

1 F.3d 1115, 1119 (9th Cir. 1999); Roe v. Anderson, 134 F.3d 1400, 1402 (9th Cir. 1998).
2 Therefore, this Court deems it appropriate to grant plaintiff's motion for a temporary
3 restraining order enjoining any future foreclosure sale of the residence located at 2921 E.
4 11th Street, National City, CA 91950 and enjoining defendant from initiating unlawful
5 detainer proceedings against plaintiff. Furthermore, pursuant to Rule 65(c), plaintiff shall
6 post a security bond in the amount of \$500 with this Court. In addition, this Court
7 deems it appropriate to set a hearing date and briefing schedule for plaintiff's motion for
8 preliminary injunction. During the preliminary injunction hearing, the Court may alter
9 the amount of the security bond.

10 To the extent that plaintiff seeks to enjoin any previously conducted foreclosure,
11 sale or transfer of his residence, that request is DENIED as MOOT. Moreover, if plaintiff
12 seeks to enjoin an unlawful detainer action currently pending in state court, that request
13 is DENIED under the Anti-Injunction Act and the abstention doctrine stated in Younger
14 v. Harris, 401 U.S. 37 (1971).

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17 Accordingly, IT IS HEREBY ORDERED that:

18 1. Plaintiff's ex parte petition for a temporary restraining order is **GRANTED**;
19 2. Defendant, its agents, servants, employees and representatives, and all
20 persons acting in concert or participating with them, are hereby **ENJOINED AND**
21 **RESTRAINED** from engaging in, committing or performing directly or indirectly, any of
22 the following acts:

23 a. Foreclosing upon, selling or otherwise transferring the real property
24 located at 2921 E. 11th Street, National City, CA 91950, County of San Diego, in the
25 State of California, if such sale or transfer has not already occurred;

26 b. Instituting legal proceedings including but not limited to Unlawful
27 Detainer proceedings to remove or otherwise interfere with plaintiff's possession of the real
28 property located at 2921 E. 11th Street, National City, CA 91950, County of San Diego,

1 in the State of California, if such proceedings have not already been initiated;

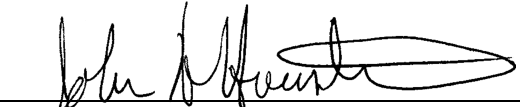
2 3. **No later than 4:00 p.m. on June 25, 2010**, plaintiff shall serve a copy of
3 this Order upon the defendant;

4 4. Plaintiff shall post a security bond with the Clerk of Court in the amount of
5 \$500, pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, **no later than 4:00**
6 **p.m. on June 25, 2010**; and

7 5. Plaintiff's motion for preliminary injunction is set for hearing before this
8 Court on **July 1, 2010 at 11:00 a.m.** in Courtroom 11. Plaintiff shall file and serve his
9 motion for preliminary injunction **no later than June 28, 2010 at 12:00 noon.**
10 Defendant shall file and serve its opposition **no later than June 30, 2010 at 12:00**
11 **noon.**

12 IT IS FURTHER ORDERED that this temporary restraining order will expire on
13 July 1, 2010 at 12:00 noon, absent further order of the Court.

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15 DATED: June 23, 2010

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18 JOHN A. HOUSTON
19 United States District Judge
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